Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

DIANA FAIRECHILD,
Petitioner,

v.

UNITED AIRLINES, INC AND
PACIFIC INSURANCE COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF HAWAII

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a. QUESTIONS PRESENTED

1. Does a State via its laws impose a condition of slavery upon all employees within the state when its laws give the employers the right to intentionally injure the employees without recourse to the common law by the employees in violation of Amendment XIII?

2. Has the State of Hawaii via Sections 386-5 and 386-6 Hawaii Revised Statutes (HRS) subjected all employees to a form of Involuntary Servitude by making it part of every employment contract that the employers can willfully and with premeditation poison the employees and at the same time deprive the willfully injured employees of their common law rights?

3. Has the State of Hawaii via Sections 386-5 and 386-6 HRS subjected this employee to incidents of Slavery by making it part of her employment contract that her Master could intentionally poison her while she was working in her Master's cabin and deny her the right to be free from such cruel and brutal treatment and deny her the freedom to hold the Master liable under the Common Law?

(a) Does the State thereby impose upon the Servant and enforce against the Servant an incident of Involuntary Servitude in violation of Amendment XIII?

4. When the highest State Court approves of and enforces said restraint, refuses to hear oral argument by the Servant and uses a "Memorandum Opinion" to dispose of the Servant's complaint against the Master:

(a) Does the State thereby endorse and/or enforce an act of slavery in violation of Amendment XIII?

(b) Does the State thereby endorse and/or enforce an act of Involuntary Servitude in violation of Amendment XIII?

(c) Has the State thereby denied the intentionally injured Servant due process, in violation of Amendment XIV?

(d) Has the State thereby denied the Servant the equal protection of the law in violation of Amendment XIV?

5. Whether the Labor and/or Workers' Compensation Laws of the Several States, as written and/or as interpreted and enforced are dividing (or have divided) the United States into "Free States and/or Slave/Involuntary Servitude States": in violation of Amendments XIII and XIV, our heritage, culture, and history?

6. Whether the record demonstrates that the Labor and/or Workers' Compensation Laws of the Several States, as written and as construed and enforced against employees are a continuation of a type of "Fugitive Slave Act" in violation of Amendments XIII and XIV?

7. Whether, in view of the fact that Amendment XIII, designated herein as "The Freedom Law," is not self-executing, it is the duty of the Federal Courts and the Judges and Justices thereof to enforce the prohibition of Slavery and Involuntary Servitude, sua sponte, whenever the facts in the case demonstrate the presence of the brutal and cruel incidents and badges of Slavery and/or Involuntary Servitude?

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b. THE NAMES OF ALL THE PARTIES ARE IN THE CAPTION

No._____

IN THE SUPREME COURT OF THE UNITED STATES

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d. OFFICIAL AND UNOFFICIAL REPORTS

Copies of the official and unofficial reports are presented in a separate volume "Appendix." They are:

"A" Memorandum Opinion dated 01/16/97 "A" Supreme Court, State of Hawaii

"B" Order denying Motion for Reconsideration dated 02/05/97 "B" Supreme Court, State of Hawaii

"C" Order granting defendant's Motion for Judgment on pleadings dated 12/23/96 U.S. District Court Northern District of California "C"

"D" Copies of communications between USDC Northern District of California and Hawaii State Supreme Court "D"

"E" Decision and Order dated 12/02/94 Hawaii State Labor and Industrial Relations Appeals Board "E"

e. GROUNDS OF JURISDICTION

Jurisdiction is invoked pursuant to 28 USC Section 1257 (a), Rule 13.1 Revised Rules of the Supreme Court of the United States and Article III and Amendment XIII of the Constitution. Petitioner relies on the case of Dred Scott v. Sanford, 60 US 393 (1856) and Prigg v. Pennsylvania 41 US 539 (1842) and other pre-Civil War cases wherein the Supreme Court exercised jurisdiction and researched the history and traditional application of the "Law of Slavery" and vigorously enforced said law. Petitioner also relies on post Civil War cases such as the Slaughter House Cases 83 US 36, 21 L. Ed 394 (1873) and Hodges v. United States, 203 US 1, (1905) wherein the United States Supreme Court in exercise of its jurisdiction researched the history of the Law of Slavery as well as the Law of Freedom (Amendment XIII) and identified "badges and incidents of slavery" that are absolutely prohibited under the flag of the United States and within the exclusive jurisdiction of this Honorable Court. One of the cruelest incidents of slavery was the rule that a human, no matter how brutally treated by a Master was denied the freedom to seek a common law remedy and trial by jury against the Master for fair and adequate compensation for the intentional (assault and battery) injuries and dehumanization.

Petitioner's initial attorney failed to recognize that she, as well as all employees in Hawaii, are subjected to cruel and unusual punishment (intentional physical injury)–"purposeless and needless imposition of pain and suffering"–by a State of Hawaii law, which said law the State writes into every employment contract. Said attorney failed to raise the constitutional issues and subjected her to the "exclusive" Workers' Compensation Law of Hawaii. After substitution of attorneys, Petitioner raised the issues involved herein by filing her claim as preserved under the Labor Law of California. She was injured on a flight to San Francisco and she was ill in California (Appendix "C"). The two courts, Hawaii Supreme

Court and the U.S. District Court, Northern District of California exchanged letters relative to Petitioner's cases and she was subjected to urgings by her Master that she was not free to assert her rights under the California Law. A result, similar to the rule imposed in Dred Scott and Prigg was imposed on her, "Once a slave; always a slave."

After denying her oral argument, the State of Hawaii Supreme court entered a "Memorandum Opinion" denying her any relief on January 16, 1997 (Appendix "A"). A Motion for Reconsideration was timely and pointed out that the Thirteenth and Fourteenth Amendments were being violated (Appendix "G," Supporting Affidavit). On February 5 1997, an Order denying her Motion for Reconsideration was entered without a hearing. Rule 13.1 provides that this Petition must be filed by May 6, 1997.

Jurisdiction is also grounded on the fact that Amendment XIII, the Freedom Law, is not self-executing and its respect, integrity, and enforcement are vested in the Supreme Court of the United State via Amendment III.

f. CONSTITUTIONAL PROVISION
STATUTES AND RULES INVOLVED

UNITED STATES CONSTITUTION

Amendment XIII
Amendment XIV, Due Process and Equal Protection.

HAWAII REVISED STATUES (HRS)

HRS Section 386-5
HRS Section 386-6

CALIFORNIA LABOR CODE Section 3602(b) (2)

HAWAII RULE OF APPELLATE PROCEDURE (HRAP)

HRAP, Rule 35 Opinions
The above are presented in Appendix "F"

g. STATEMENT OF THE CASE

INTRODUCTION: This is a Master–Servant relationship that has been converted into a Master–Slave relationship via the laws of the State of Hawaii, Sections 386-5 and 386-6 Hawaii Revised Statutes (HRS), and Rule 35 Hawaii Rules of Appellate Procedure (Memorandum Opinion). When construed and applied together with California Labor Code Section 3602 (West 1996), this case identifies California as a "Free State" and Hawaii a "Slave State." The record demonstrates that if the Servant had been hired in California, rather than Hawaii, her freedom to protect herself from her Master's intentional foggings (spraying pesticide on her) and her common law right to trial by jury, general damages for conscious pain and suffering, special damages, punitive damages, and injunctive relief would have been preserved. She would have been as free as all of the other employees hired in California and entitled to the equal protection of the law.

BACKGROUND: The Servant was an international flight attendant who started her service in 1966. Her Master was Pan Am (Tr. 9/27/89, p.5). In 1986, Pan Am was "bought out" by United Airlines at the Servant's home port in Hawaii and said Servant, who had 19 years seniority, was continued in service by a new Master (Tr. 7/19/91, pp. 17-18). United Airlines required her to undergo a physical examination by its physician prior to entering its service. This Servant was free from any illness (R. 635, 1216-1217; Tr. 9/27/89, p. 5, and Tr. 7/18/91, p. 31; R. 1217-1218).

On the Australia and New Zealand routes of each Master, prior to permitting the employees and passengers to disembark, everyone on board was intentionally sprayed with a poison, which both Masters informed her and other employees and said passengers was not harmful to human beings (Tr. 7/18/91, p. 20). This poisoning of the employees

and passengers was performed by the Master sealing everyone in its aircraft cabins, even shutting down the air-conditioning in the aircraft, and requiring the Servants to instruct its passengers that the spray was not toxic. This poisoning of the employees and the passengers was performed by the Master intentionally assaulting and battering their exposed skin, eyes, nasal passages, lungs and other exposed areas including lips, mouths, ears, and hair for a fifteen-minute (15-minute) saturation (uninterrupted assault and battery) period (Tr. 7/18/91, p. 20).

For eighteen of her nineteen years with her prior Master (Pan Am), this Servant was able to perform her duties as demanded of her during and after these intentional poisonings without manifesting any permanent or chronic physical injury or harm from being so fogged with said poison spray (Tr. 7/18/91, p. 22). Then, in January 1985, after cabin foggings in New Zealand and Australia, this Servant began to experience feeling of disorientation, headaches, and burning in her nose, sinuses, and throat. She was seen by an allergy specialist hired by Pan Am, Arthur Neilson, M.D., on January 21, 1985 (Appendix "E" Par 5). Dr. Neilson found no stigmata of allergic disease. "He opined that Claimant's reaction to the insecticide spray was not an allergic reaction, but an irritative response of the mucus membrane of the respiratory tract and the conjunctivae" (Ibid).

On February 11, 1985, this Servant sought a consultation with George Ewing, M.D. an American Board Certified Allergist and Immunologist at Straub Clinic & Hospital, Honolulu (Tr. 7/18/91, pp. 24, 56; Tr. 9/16/91, p. 19). Dr. Ewing tested her to determine if she was sensitive to any chemicals, in particular to D-Phenothrin, the principal chemical in the spray used to fog the cabins and occupants of the airplanes. On February 14, 1985, Dr. Ewing performed a provocation-neutralization test on her. Using the pesticide from the airplane in a double-blind study, Dr. Ewing's nurse placed three droplets of the diluted pesticide under Diana

Fairechild's tongue. Diana reacted with symptoms that included rapid heart beat, shooting pains under the right ribs, burning on the tongue, headache, and anxiety. This specific test is approved by the Academy of Otolaryngic Allergy. Dr. Ewing's diagnosis was that Diana had a sensitivity to the pesticide used on the airplanes whose principal chemical was D-Phenothrin (Appendix "E" Par. 7). On May 17, 1985, Dr. Ewing cautioned her that she could develop sensitivities to other chemicals if exposures to D-Phenothrin continued. Diana avoided further exposures during her remainder of employment with Pan Am (Appendix "E" Ibid).

Diana did not lose any time from work as a result of this sensitivity to D-Phenothrin during her employment with Pan Am. Due to the fact there were no recurring symptoms and she was able to perform her duties to full capacity, she did not pursue a Workers' Compensation claim with Pan Am (Tr. 7/18/91, pp. 24-29; M.R. 5/26/89, p. 12).

The next year, 1986, United Airlines became her new Master. Even though United Airlines was fully informed of her sensitivity to the pesticide used inside the aircraft on certain routes, she was hired.

Working conditions were different with this Master (United) than with the previous Master (Pan Am). United flew DC10s, whereas Pan Am flew 747's. On the DC10s, the economy smoking section was in front of the no-smoking section. The Galley was between the economy smoking section and the first class smoking section. This Servant was required to go through a smoking section to serve anyone in the Master's plane. In addition, the Master allowed its passengers to stand around the Galley and smoke cigarettes (R. 1306). The Servant's workplace was always filled with tobacco smoke and it was very stuffy because it was the Master's standard operating procedure to reduce the air supply as a way to reduce operating costs. The procedure helped the Master to reduce the amount of fuel used and related expenses (Tr. 7/18/91, pp. 31-34; R. 1127-1129, 1280-

1281, 1242-1243). This Servant's work shifts were often in excess of eighteen (18) hours on overnight flights (R. 817-821, 1243-1244).

On August 12, 1986, on a United Airlines flight to New Zealand, the Master fogged its cabin with pesticide and this Servant and others as well as the passengers for fifteen (15) minutes. This Servant became very ill. Her immediate symptoms from this fogging in the Master's cabin included headache, body aches, and an eye condition which the Master's physician referred to as blepharitis (bugged out eye rimmed with red scaly skin) (Tr 7/18/91, pp. 35-37. See also Finding of Fact #12. Appendix "E" p. A5 thereof.). "She described them as looking like 'golf balls,' with a pus-like discharge. She also described dark circles under her eyes, and scaly skin around the eyes." Prior to August 12, 1986, she had not been fogged with this alleged "non-toxic" insecticide since January 1985 (Appendix "E" Finding of Fact #13). This was the first time she became ill while in the service of this Master (Tr. 7/18/91, p. 36).

The Servant filed for Workers' Compensation benefits and she was awarded reimbursement of medical expenses (Tr. 7/18/91, p. 36). That claim or case was never reopened.

After the New Zealand cabin-fogging injury, the Servant appeared to gradually recover because she no longer had blepharitis; however, she still experienced other symptoms including headache, conjunctivitis, chest pain, nausea and increased mucous during and immediately after all her flights which were all smoking flights, even though she and the cabins had not been fogged for the fifteen-minute saturation period (Tr. 7/18/91, pp. 44-55; M.R. 6/13/89, pp. 44-55; Appendix "E: para 17). Also, many of the cabins of the planes in which she worked had been fogged with the poison spray on the flights immediately before her flights, and thus contained residue of the chemical poison in the upholstery, carpets, and walls (Tr. 7/18/91, pp. 51). The air on all her

flights was always filled with tobacco smoke (Tr. 7/18/91, p. 34) and always had a low oxygen content.

"On December 20, 1987, on a smoking flight to San Francisco from Honolulu, Claimant flew on a plane that had just made stops in New Zealand and Australia prior to landing in Honolulu. Claimant alleged exposure to D-Phenothrin on this date." (Finding of Fact #23, Appendix "E"). The cabin of that plane had been fogged with the pesticide three times in the 24-hour period just prior to her flight (Tr. 7/18/91, pp. 53-55). She was not ill before boarding. During the flight, she experienced body aches, conjunctivitis, headache, fever and a very bad cough (Tr. 7/18/91 54-55, Tr. 9/27/89, p. 17; M,/r, 5.26.89m o, 3l /r, 1186-87). She never recovered (Tr. 7/18/91, p. 55). She continued to have flu-like symptoms for many months. She suffered backaches, burning sensations, chest pain, conjunctivitis, cough, depression, disorientation, dizziness, ear aches, gall bladder pain, headaches, memory loss, nausea, and swollen glands (M.R. Honolulu Medical Group May 5, 1989, pp. 14-15, 17; Tr. 7/18/91, pp. 55, 57; Tr. 9/25/91, pp. 22-25; Tr. 7/18/91, p. 55). She also had fevers, rashes, and open sores (Tr. 7/18/91, 55, 57). As a result of the August 1986 injury, she had become sensitive to many chemicals in addition to the original sensitivity to D-Phenothrin. After the December 1987 flight, she became completely disabled with Multiple Chemical Sensitivity (Tr. 7/18/91, pp. 55-58; M.R. 5/26/89, pp. 13-17; Tr. 9/25/91, pp. 15-19).

Dr. Ewing wrote in August 1988 that her Multiple Chemical Sensitivity (MCS) was caused by the work environment on United Airlines' aircraft. This was her first information that the disability she suffered was MCS due to the pesticide foggings. He recommended that she avoid chemicals that could aggravate her symptoms. He saw no need for further work-up or laboratory testing" (Finding of Fact No. 27, p. A9, Appendix "E"). After Dr. Ewing diagnosed her with MCS, Dr. Yuen, a psychiatrist, brought

his diagnosis of "adjustment disorder" current and diagnosed her with "organic mood syndrome." Dr. Yuen testified that he considered her emotional difficulties or mood to be a product of an organic, physical cause (Ibid, No. 29). Dr. Yuen concluded that this was a chronic and disabling illness (Tr. 9/25/91, pp. 12-25; M.R. Honolulu Medical Group, 5/26/89, pp. 13-17, 25).

On January 24, 1989, on advice of her former attorney that Hawaii law restricted her to only the benefits of Workers' Compensation (HRS Sections 386-5 and 386-6), she filed for said relief by and through said attorney (R. 5). The claim was denied on February 3, 1990 on the grounds that: 1) She sustained no injury; 2) If she did have an injury, it was an exacerbation of her chemical sensitivity while with United; and 3) Her adjustment disorder was a consequence of her original injury with Pan Am (R. 437-438).

She appealed on March 12, 1990 to the Hawaii Labor and Industrial Relations Appeals Board (HLIRAB). Hearings took place before the HILRAB on July 18, and September 16 and 25, 1991.

The Servant's treating physicians and their consultants testified that her illness was MCS and that is was caused by exposure to the pesticide poison and other toxic chemicals on United Airlines aircraft. Her medical expert witnesses were George Ewing, M.D., Gregory Yuen, M.D., Steven Plavnick, PhD., James Miller, M.D., and William Rae, M.D. (tr. 9/16/91 pp. 1-60; Tr. 9/25/91 pp. 17-18, 57-80; and R. 55, 123-127, 632-39). On November 2, 1994 (3 years after the Hearings) the HILRAB filed its Decision (Appendix "E") stating that, "We are unable to conclude that Claimant sustained an injury on December 20, 1987, as a result of exposure to D-Phenothrin at work. At most, Claimant has proven that she suffered an irritative reaction to D-Phenothrin, in the form of blepharitis and conjunctivitis, when she was exposed in 1985 and 1986. There was no

evidence that she suffered a similar reaction on December 20, 1987." (Ibid p. A16-17).

The HILIRAB rejected her treating physician's and consultants' testimony and accepted the testimony of the Master's experts. The HILRAB wrote that its members believed and accepted the "Opinions" of the Master's experts. They wrote, "We credit Dr. McDonnell's opinions." (Id p. A12). We credit Dr. Comstock's opinions." (Id p. A13). Dr. Comstock, who was presented as a "medical toxicologist" diagnosed this Servant's "current condition as an iatrogenic chemophobic anxiety reaction to chemicals" (Appendix "E" para. 38, p. A13). "latrogenic," according to Melloni's Illustrated Medical Dictionary, means: "Caused by a physician; said of an illness unwittingly induced in a patient by the physician's attitude, treatment or comment." The HILIRAB had found as a fact that "Claimant currently lives in a rural area in upcountry Maui. In order to minimize chemical exposures. Claimant leads a reclusive existence, avoiding traffic and most people." (Ibid "E" p. A10).

The Servant appealed to the Supreme Court of the State of Hawaii and the Appeal was assigned S.C. No. 18726. She discharged her attorney and retained her present one. She also retained Thomas J. Kaster, Esq. of San Francisco, California and he filed a claim in California for her, claiming rights under the California Labor Code, Section 3602. The history of that case and the grounds of jurisdiction are contained in Appendix "C," which is a copy of the ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADING, No. C-96-1775 JSB, United States District Court, Northern District of California, DIANA FAIRECHILD v. UNITED AIRLINES, ET AL., filed and entered December 20, 1996.

Before Appendix "C" was granted, Magistrate Judge Joan S. Brennan and Chief Justice of the State of Hawaii Supreme Court Ronald T.Y. Moon exchanged

communications concerning both cases. Copies of said communications are contained in Appendix "D."

Subsequently, the Federal Court (California), upon the persuasive argument of the Master's attorney, dismissed the Servant's case under the Californian Labor Code, stating "Hawaii's workers' compensation statute is the applicable law. Plaintiff's claim is barred under Hawaii's Workers' Compensation statute, which recognizes no exception for an Master's fraudulent concealment." (Appendix "C" p. 10).

Thereafter the State of Hawaii Supreme Court, after refusing to hear oral argument, issued a Memorandum Opinion (Appendix "A"). The State Supreme Court endorsed the finding of the State of Hawaii LIRAB, "that Claimant does not suffer from an injury as claimed."

Within ten days this Servant filed a Motion for Reconsideration January 27, 1997. Appendix "G," the "Supporting Affidavit" in support of the Motion for Reconsideration, points out to the State Supreme Court of Hawaii that the Hawaii Statutes and Memorandum Opinion impose upon and enforce upon the employees in Hawaii an incident of slavery and involuntary servitude, specifically, the right of the Master to intentionally whip, or otherwise physically abuse a slave with the consent and protection of the state.

On February 5, 1997, the State of Hawaii Supreme Court denied the Motion for Reconsideration (Appendix "B"). Pursuant to Rules 12 and 13. Petitioner has until May 6, 1997 in which to file this Petition.

h. HOW THE FEDERAL QUESTION WAS RAISED

The Federal Question was raised in the Supporting Affidavit, Appendix "G."

"Affiant verily believes that it was an incident of slavery and involuntary servitude for a master to intentionally whip, or otherwise physically injure a slave or peon with impunity.

"Affiant verily believes that the law of Hawaii and of the United States via the Thirteenth and Fourteenth Amendments prohibits an employer from intentionally poisoning an employee in the course of employment.

"Affiant respectfully suggests to the Court that the Memorandum Opinion in this case denies the injured employee the Equal Protection of the Law as well as liberty and property rights without due Process of Law."

The Supreme Court of Hawaii responded by an Order denying any argument or hearing on the Federal Question and denied the Motion for Reconsideration summarily.

Petitioner also raised the issues of slavery and involuntary servitude by fleeing to the State of California and seeking relief from the conditions of slavery and/or involuntary servitude impressed upon her via Hawaii law. Appendix "C" shows that the Federal Court in California followed the course of the fugitive slave laws. See Encyclopedia Britannica, "Fugitive Slave Laws, a term applied in the United States to the statutes passed in Congress in 1793 and 1850 to provide for the return of Negro slaves who escaped from one state into another or into a federal territory. . . In 1842 the U.S. Supreme Court in the case of Prigg v. Pennsylvania ruled that the state authorities could not be forced to act in fugitive slave cases, but that federal authorities must carry out the federal law. . ."

Petitioner herein had sued, as a free person, in the California State Court. The Master (Respondent herein, United Airlines) had the case removed to the USDC for the Northern District of California. The Federal Court (California) relegated this woman to the "exclusive"-slave and involuntary servitude law of Hawaii (Appendix "C"). The Hawaii Supreme Court then summarily disposed of her claim by employing the Memorandum Opinion (Appendix "A"). Once a slave; always a slave was the law of the United States in 1842, Prigg v. Pennsylvania 41 U.S. 539 (16 Peters 539) and Federal Judges vigorously enforced said law. However,

the fugitive slave law was repealed June 28, 1864. Amendment XIII. The Law of Freedom, now prohibits all judges, State and Federal, from enforcing any form of slavery or involuntary servitude upon any employee anywhere under the Flag of the United States. This Federal Question is raised sua sponte. "The state (condition) of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws" (Prigg p. 611). The Hawaii Court and the Federal Court (California) adapted the fugitive slave laws to abrogate this intentionally injured Servant's privileges and immunities.

The Court is respectfully requested to rule that the Federal Question was timely and appropriately raised.

i. STATEMENT: 28 U.S.C. SECTION 2403(a) MAY APPLY

j. REASONS WHY CERTIORARI SHOULD BE GRANTED

Slavery and involuntary servitude are concepts of law imposed upon humans by a state or a nation. The earliest tribes had slaves. slavery and involuntary servitude are not based on race, creed, national origin or sex (Hodges v. United States 203 U.S. 1 (1905)). The "Law of Slavery" predates the Talmud, the Koran, and the Holy Bible. Exodus is an historic account of the escape from the law of slavery as enforced against the tribes of Israel by the Egyptian empire. Slavery and involuntary servitude are identified by "badges and incidents" (Hodges, Ibid, p. 16).

A master flogging a servant with a whip while the servant is performing services for the master in the confines of the master's cabin has always been recognized in the United States as a brutal and cruel incident of slavery. The "Law of Slavery" is a vital part of our history and the Court is requested to take judicial notice thereof. The law of the slave

state protected the master by prohibiting the intentionally injured and dehumanized servant from not only the freedom to be free from assault and battery, but also the freedom to exercise the common law remedy of an action for damages, for pain and suffering, special and punitive damages, injunctive relief, as well as a trial by a jury of free men and women who decide whether medical expert witnesses are credible or paid hirelings of a cruel and brutal master. The fugitive slave laws required Federal Judges to enforce slavery and prevent a slave from escaping to a "Free State." (Prigg v. Pennsylvania, supra).

When a master fogs a servant with a poisonous spray for fifteen minutes while she is confined within its cabin and performing her work, that should be recognized as a form of brutal and cruel infliction of physical injury and dehumanization. Such an assault and battery is more dehumanizing that a flogging with a whip because a master uses a whip to goad a horse, mule, ox or slave to perform services. However, a master uses a poison to kill lower forms of life such as lice, mice, bats, gnats, rats and things like that, that are not his property and which he loathes.

The purpose of Amendment XIII was to forbid all shades and/or forms of slavery and involuntary servitude. (Slaughter House Cases, 83 US 36, 21 L.Ed. 394, 1873). However, Amendment XIII is not a self-executing law. When the scholars of law, labor and history accidentally or intentionally disregard the Law of Freedom (Amendment XIII) and find sophisticated legalese with which to resurrect and enforce the most cruel and brutal badges and incidents of slavery and inflict them upon the total work force of a state, it will be an obvious act of abuse of judicial discretion for the Supreme Court of the United States to deny a petition for Writ of Certiorari. The Supreme Court will be refusing to enforce the Law of Freedom (Amendment XIII) with the same vigor traditionally employed to enforce the Law of Slavery.

It is respectfully submitted that this petition is also a request that the Court exercise its constitutional authority under Article III, as well as a petition to the discretion of the Court. The Court should take this case because slavery and involuntary servitude are absolutely prohibited everywhere under the jurisdiction of this Honorable Court.

> "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." (Amendment XIII)

It is respectfully pointed out that there is no other power on earth that can respect and enforce this absolute prohibition if the Justices of this Honorable Court reject this petition.

This absolute prohibition is a vital part of the heritage, culture, tradition and history of the United States. This absolute prohibition is the most prominent feature with which we face the entire world.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Amendment XIV).

All persons look to the Supreme Court of the United States for scholarly instruction as to how to prevent applications of law that are so sophisticated they convert an ordinary master–servant relationship into a brutal form of slavery. Certiorari should issue because the record demonstrates that the state lawmakers, judges, and other enforcers have resurrected said brutal forms without reason, need or justification, and with apparent heedlessness.

Employers do not need a protected right to flog, poison, rape, or brutalize any employee. In Hawaii, as elsewhere, masters do not hire a servant and pay that servant wages so as to have the right to flog, poison, rape, or brutalize said servant in the course of employment. Servants in Hawaii do not contract and agree to have the master flog, poison, rape or brutalize them for wages. It is the state who imposes this form of slavery and/or involuntary servitude upon all employees in Hawaii. See HRS Section 386-5: Exclusiveness of right of compensation and HRS Section 386-6: Territorial applicability. "If an employee who has been hired in the State (Hawaii) suffers work injury, he shall be entitled to compensation under this chapter even though the injury was sustained without the State. The right to compensation shall exclude all other liability of the employer for damages as provided in Section 386-5. ALL CONTRACTS OF HIRE OF EMPLOYEES MADE WITHIN THE STATE SHALL BE DEEMED TO INCLUDE AN AGREEMENT TO THAT EFFECT." (Emphasis added)

The aforesaid words are the bonds of slavery and involuntary servitude that give the master the right to intentionally injure the servant, provided the master pays the dreadfully injured servant two-thirds base pay plus out-of-pocket needed medical services.

Such brutality caused the women of Hawaii to protest and in 1992 the bonds of slavery and involuntary servitude in HRS Section 386-5 that gave the master a protected right of "sexual harassment, sexual assault, and infliction of emotional distress and invasion of privacy" were cut away. Unfortunately, the women and the scholars of law, history and labor failed to recognize that sexual harassment, rape, infliction of emotional distress (dehumanization) and invasion of privacy are some of the less brutal incidents of slavery and involuntary servitude.

Obviously, the law makers, enforcers and interpreters of the law of the state need the assistance of the Supreme Court

of the United States. Hawaii needs the help and understanding of this Honorable Court via a Writ of Certiorari.

The record also demonstrates that the entire nation needs to have a Writ of Certiorari issue in this case. The record shows that this servant tried to escape the bondage imposed upon her via HRS Sections 386-5 and 386-6. She has a work-connection with the state of California. She was treated for her injuries in California. California is a free state in that its workers' compensation law, California Labor Code Section 3602 (b) (1) and (2), provides freedom for the servant to protect herself (himself) according to the common law and Amendments XIII and XIV. The California law provides:

> "(b) An employee, or his or her dependents in the event of death, may bring an action at law for damages against the employer, as if this division did not apply, in the following instances:
>
> (1) Where the employee's injury or death is proximately caused by a willful physical assault by the employer.
>
> (2) Where the employee's injury is aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment, in which case the employer's liability shall be limited to those damages proximately caused by the aggravation. The burden of proof respecting apportionment of damages between the injury and any subsequent aggravation thereof is upon the employer."

The servant, Petitioner herein, filed an action in California against the master (United Airlines, et al) February 27, 1996 claiming a violation of California Labor Code. See Appendix "C," Diana Fairechild v. United Airlines, et al., No. C-96-1775 JSB, United States District Court, Northern District of California.

The California (Federal) Court and the Hawaii Supreme Court exchanged communications concerning the case.

(Appendix "D") The Hawaii Supreme Court denied the Servant oral argument on the appeal, the California Court denied the Servant the freedom to use the California Labor Code and sent the servant back to Hawaii by determining that the servant had no rights under the California Labor Code, and then the Hawaii Supreme Court disposed of the servant's claims via a Memorandum Opinion pursuant to Hawaii Rules of Civil Procedure, Rule 35.

A Memorandum Opinion is not a precedent. It cannot be cited as law in any subsequent case. In this case, it can be compared with the act of the slaver closing the master's cabin door and keeping the moans and cries of the flogged (fogged with poison) human inside and protecting the master from being properly and lawfully charged with an action for assault and battery, intentional infliction of emotional harm (a most outrageous dehumanization), and sued by the human for damages for pain and suffering, special damages, punitive damages and injunctive relief. The Memorandum Opinion also prevents the servant from ever having the people via a civil trial by jury determine all of the facts and the amount of the verdict. The master purchases expert opinions that the dreadfully injured human was not injured by the poisonous foggings, although her treating physicians swear she was permanently so injured.

Copies of the communications between the Courts are presented in Appendix "D." In substance and effect the free state of California, via the Federal District Court, and the slave state of Hawaii devised a kind of fugitive slave act that brings the sophistry and legalese found in Dred Scott v. Sanford and Prigg v. Pennsylvania into the 21st Century.

With all due respect to the Courts, and officials involved, it appears obvious that all of the states, their institutions, and people need the scholarly assistance of the Supreme Court of the United Stated to restore the integrity of Amendments XIII and XIV of the Constitution of the United States, and bestow the blessing of liberty upon this employee and all employees,

and therefore, a Writ of Certiorari to the Supreme Court of the State of Hawaii should be granted.

Dates: Honolulu, Hawaii April 27, 1997

Respectfully submitted

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Petitioner